IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976-1977

No. 77-87

KAMA CORPORATION, *Petitioner*

v.

LOCAL NO. 1561, U.A.W. AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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August 15, 1977

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REASONS FOR DENYING WRIT OF CERTIORARI

The Decision Herein Presents Neither a Conflict with the Decision of This Court or Another Court of Appeals, Nor any Important Question of Federal Labor Contract Law.

Petitioner asserts a conflict, but it is with another of the decisions of the court below, which is not, of course, a valid basis for seeking the writ.[1]

1. Petitioner contends, erroneously, at page 13 of the Petition, that the court below, in affirming the District Court, failed to follow its own decision in *Ludwig-Honold Mfg. Co. v. Fletcher,* 405 F.2d

It requires but few words to show that the decision of the court below here is a classical application of this Court's *Enterprise*[2] standard, and so presents neither a conflict with that decision, as petitioner also asserts, nor an important issue of federal labor contract law.

Before the Arbitrator, petitioner contended that the sickness leave clause of the collective bargaining agreement allows it to terminate an employee whose illness goes beyond thirty days, on grounds unrelated to the employee's health. The Arbitrator rejected this interpretation of the clause, ruling instead that, "While the sickness clause grants the Company sole discretion in extending sick leave, its language suggests that the right must be exercised within the bounds of illness." (7a). Finding that the termination was for reasons other than illness, the Arbitrator ruled against petitioner and ordered the employee reinstated, without back pay.

Plainly, the Arbitrator's decision was based upon his interpretation of the sickness leave clause, as the District Court easily found: "In effect, it is plaintiff's contention that absence due to illness beyond thirty (30) days, without more, provides sufficient basis to dismiss an employee under this section. The Arbitrator, however, refused to base his

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Footnote 1—(Continued)
1123 (1969), but instead followed the Ninth Circuit decision in *Aloha Motors, Inc. v. ILWU Local 142*, 530 F.2d 848 (1976). Cert. does not issue to resolve the conflict between two decisions of the same Court of Appeals. Mr. Justice Harlan, *Manning the Dikes*, 13 Record of N.Y.C.B.A. 541, 552 (1958); see *Wisniewski v. United States*, 353 U.S. 901 (1957).

Moreover, the asserted difference between *Fletcher*, *supra*, and *Aloha*, *supra*, on which petitioner relies, is just a difference, not a distinction. In *Fletcher*, the Court said an award must be enforced if based on a "rational" interpretation of the contract, and in *Aloha* the court said "plausible" interpretation.

2. *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960).

decision solely on this provision but instead ruled that Article VI, Section 3 *must be read in conjunction with* the contract term prohibiting discharge without just cause." (9-10a; emphasis added). Since the Arbitrator's decision was based on his reading of the collective bargaining agreement, the District Court ordered enforcement under *Enterprise*, stating that the Arbitrator's ruling "does 'draw its essence from the collective bargaining agreement' " (10a). The Court of Appeals agreed and affirmed the District Court's decision (12-13a).

In *Enterprise*, this Court, in reversing, said, "The Court of Appeals' opinion refusing to enforce the reinstatement and partial back pay portions of the award was not based upon any finding that the arbitrator did not premise his award on his construction of the contract."[3] Here, the courts below found the Arbitrator's Award premised on his construction of the contract (the sickness leave clause). Manifestly, therefore, there is no conflict with a decision of this Court or another Court of Appeals, and there is no important question of federal labor contract law.

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3. *Id.*, at 598.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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